

**U.S. Bankruptcy Court
California Northern Bankruptcy Court (San Francisco)
Bankruptcy Petition #: 19-30088**

Assigned to: Judge Dennis Montali
Chapter 11
Voluntary
Asset

Date filed: 01/29/2019
Plan confirmed: 06/20/2020
341 meeting: 04/29/2019
Deadline for filing claims: 10/21/2019
Deadline for filing claims (govt.): 10/21/2019

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Filing Date	#		Docket Text
05/18/2022		<u>12409</u>	Appellant Designation of Contents For Inclusion in Record On Appeal <i>Reorganized Debtors' Statement of Issues and Designation of Record on Appeal</i> (RE: related document(s) <u>12311</u> Notice of Appeal and Statement of Election filed by Debtor PG&E Corporation). Appellee designation due by 06/3/2022. Filed by Debtor PG&E Corporation (Rupp, Thomas) (Entered: 05/18/2022)
06/01/2022		<u>12476</u>	Appellee Designation of Contents for Inclusion in Record of Appeal <i>Designation of Additional Record on Appeal and Statement of Issues</i> (RE: related document(s) <u>12311</u> Notice of Appeal and Statement of Election filed by Debtor PG&E Corporation). Filed by Interested Party California Department of Water Resources (Pascuzzi, Paul) (Entered: 06/01/2022)

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

**Reorganized
Debtors.**

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Reorganized Debtors

** All papers shall be filed in the Lead Case, No.
19-30088 (DM).*

Bankruptcy Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

District Court Case No. 4:22-cv-02833-HSG

**REORGANIZED DEBTORS'
STATEMENT OF ISSUES AND
DESIGNATION OF RECORD ON
APPEAL**

[Re: **Dkt. No. 12311**]

Pursuant to Rule 8009(a) of the **Federal Rules of Bankruptcy Procedure** (the “**Bankruptcy Rules**”), PG&E Corporation and Pacific Gas and Electric Company, as reorganized debtors (collectively, the “**Debtors**” or the “**Reorganized Debtors**,” as applicable) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), submit this statement of issues and designation of record on appeal.

I. STATEMENT OF ISSUES ON APPEAL

The issues on appeal are:

(i) Whether the bankruptcy court erred in concluding that its denial of the Reorganized Debtors’ request to modify the Plan injunction to compel arbitration of the California Department of Water Resources’ (“**CDWR**”) proof of claim [Claim No. 78014] and the issue of whether CDWR had properly terminated the *Agreement of Cotenancy in the Castle Rock Junction-Lakeville 230-kV Transmission Line among Pacific Gas and Electric Company, State of California Department of Water Resources, Northern California Power Agency and the City of Santa Clara* (the “**Cotenancy Agreement**”), was also a denial of the Reorganized Debtors’ right to arbitrate its non-core affirmative claims against the CDWR under the Cotenancy Agreement, even though the Reorganized Debtors had not filed an affirmative claim against CDWR or claim objection to CDWR’s proof of claim.

(ii) Whether, after denying the Reorganized Debtors’ request to arbitrate the proof of claim dispute and CDWR’s termination of the Cotenancy Agreement, and after the Reorganized Debtors submitted that they would consent to the relief sought by CDWR in its *Motion for Order Determining that the Castle Rock Agreement with PG&E Cannot Be Assumed and that the Department of Water Resources’ Claim No. 78104 Be Paid* [Dkt. No. 11887] (the “**CDWR Motion**”) by agreeing to pay CDWR’s proof of claim in full and not to contest that the Cotenancy Agreement was not executory as to CDWR and could not be assumed as to CDWR, the bankruptcy court erred in determining that the issues before it through the CDWR Motion had not been resolved in full.

(iii) Whether, after denying the Reorganized Debtors’ request to arbitrate the proof of claim dispute and CDWR’s termination of the Cotenancy Agreement, and after the Reorganized Debtors submitted that they would consent to the relief sought by CDWR in the CDWR Motion by agreeing to pay CDWR’s proof of claim in full and not to contest that the Cotenancy Agreement was not

executory as to CDWR and could not be assumed as to CDWR, the bankruptcy court erred in determining that the Reorganized Debtors' non-core affirmative contractual claim against CDWR under the Cotenancy Agreement was before the bankruptcy court, even though the Reorganized Debtors had not filed an affirmative claim against CDWR or claim objection to CDWR's proof of claim.

(iv) Whether the bankruptcy court exceeded its jurisdiction by entering a final judgment on the merits on the Reorganized Debtors' non-core affirmative contractual claim against CDWR under the Cotenancy Agreement, even though the Reorganized Debtors had not consented to the bankruptcy court entering final judgment on its claim and had not put its affirmative claim at issue.

(v) Whether the bankruptcy court erred in denying the Reorganized Debtors' request to present its non-core affirmative contractual claim against CDWR through an adversary proceeding and in determining that the Reorganized Debtors had waived their rights to the procedural protections of an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure.

(vi) Whether the bankruptcy court erred in disallowing the Reorganized Debtors' non-core affirmative contractual claim against CDWR under the Cotenancy Agreement on the merits.

(vii) Whether the bankruptcy court erred in determining that CDWR's interpretation of the Cotenancy Agreement was correct.

(viii) Whether the bankruptcy court erred in determining that CDWR did not owe any estimated future removal costs or any other damages to PG&E or the other cotenants under the Cotenancy Agreement.

(ix) Whether the bankruptcy court otherwise erred in its determinations against the Reorganized Debtors under the Cotenancy Agreement.

(x) Whether the bankruptcy court erred in denying the motion to intervene of non-debtors Silicon Valley Power and Northern California Power Agency, and then making a dispositive ruling and final judgment by default on their contractual claims against the California Department of Water Resources arising under the Cotenancy Agreement.

II. DESIGNATION OF RECORD ON APPEAL

The Reorganized Debtors hereby designate the following items to be included in the record on appeal, each of which includes any and all exhibits and addenda attached thereto and filed therewith and any and all documents incorporated by reference therein:

Docket items from *In re PG&E Corp., et al.*, Case No. 19-30088 (DM):

Dkt. No.	Docket Items	Date
263	Amended Declaration of Jason P. Wells in Support of First Day Motions and Related Relief	02/01/2019
7037	Notice of Filing of Plan Supplement in Connection with Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 16, 2020	05/01/2020
7276	California State Agencies' Objections to Schedule of Executory Contracts and Unexpired Leases to be Assumed Pursuant to the Plan and Proposed Cure Amounts [Docket No. 7037]	05/15/2020
8048	Amended Chapter 11 Plan Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated June 19, 2020 Filed by Debtor PG&E Corporation	06/19/2020
8053	Order Confirming Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated June 19, 2020	06/20/2020
11887	California Department of Water Resources' Motion for Order Determining that the Castle Rock Agreement with PG&E Cannot Be Assumed and that the Department of Water Resources' Claim No. 78104 Be Paid	02/01/2022
11888	Notice of Hearing on California Department of Water Resources' Motion for Order Determining that the Castle Rock Agreement with PG&E Cannot Be Assumed and that the Department of Water Resources' Claim No. 78104 Be Paid	02/01/2022
11889	Declaration of Ghassan Alqaser in Support of California Department of Water Resources' Motion for Order Determining that the Castle Rock Agreement with PG&E Cannot Be Assumed and that the Department of Water Resources' Claim No. 78104 Be Paid	02/01/2022
11895	Certificate of Service	02/02/2022

Dkt. No.	Docket Items	Date
11896	Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources	02/02/2022
11897	Declaration of Joshua S Levenberg in Support of Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources	02/02/2022
11898	Notice of Hearing on Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources	02/02/2022
11914	Certificate of Service of Alain B. Francoeur Regarding One Hundred Eighth Omnibus Objection Stipulation, California Department of Water Resources Arbitration Motion, Levenberg Declaration, and Notice of Hearing	02/09/2022
11937	The Reorganized Debtors' (I) Preliminary Opposition to California Department of Water Resources' Motion for Order Determining that Castle Rock Agreement with PG&E Cannot be Assumed and that the Department of Water Resources' Claim No. 78104 be Paid and (II) Request, in the Alternative, for a Status Conference	02/16/2022
11942	California Department of Water Resources' Opposition to Reorganized Debtors' Motion for Order Modifying Plan Injunction and Compelling Arbitration	02/16/2022
11962	California Department of Water Resources' Reply to the Reorganized Debtors' Preliminary Opposition to Motion for Order Determining that the Castle Rock Agreement with PG&E Cannot Be Assumed and that the Department of Water Resources' Claim No 78104 Be Paid	02/23/2022
11963	Reply in Further Support of Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources	02/23/2022
11964	Supplemental Declaration of Joshua S Levenberg in Support of Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources	02/23/2022
N/A	Docket Text Order	02/28/2022

Dkt. No.	Docket Items	Date
11999	Memorandum Decision Regarding Dispute Between Debtors and the California Department of Water Resources	03/08/2022
12000	Order Granting California Department of Water Resources' Motion for Order Determining that the Castle Rock Agreement with PG&E Cannot Be Assumed and Claim No. 78104 Be Paid	03/08/2022
12001	Order Denying Debtors' Motion for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources	03/08/2022
12024	Notice of Appearance and Ex Parte Application for Order Authorizing City of Santa Clara, dba Silicon Valley Power and Northern California Power Agency to Intervene and File a Response to California Department of Water Resources' Motion for Order Determining that the Castle Rock Agreement Cannot Be Assumed and that the Department of Water Resources' Claim No. 78014 Be Paid	03/15/2022
12035	California Department of Water Resources' Opposition to the Ex Parte Application for Order Authorizing City of Santa Clara, dba Silicon Valley Power and Northern California Power Agency to Intervene and File a Response to California Department of Water Resources' Motion for Order Determining that the Castle Rock Agreement Cannot Be Assumed and that the Department of Water Resources' Claim No. 78014 Be Paid	03/17/2022
12054	Order Denying Motion to Intervene by City of Santa Clara, dba Silicon Valley Power and Northern California Power Agency	03/21/2022
12076	Memorandum of the Reorganized Debtors Regarding Claim of California Department of Water Resources	03/25/2022
12077	Declaration of Joshua S Levenberg in Support of Memorandum of the Reorganized Debtors Regarding Claim of California Department of Water Resources	03/25/2022
12129	California Department of Water Resources' Reply to PG&E's Memorandum Regarding Department of Water Resources' Claim No. 78104 and Further Briefing of Issues; Request for Order Staying Arbitration	04/08/2022
N/A	Docket Text Order	04/10/2022

Dkt. No.	Docket Items	Date
12147	Tentative Ruling Re Dispute Between Debtors and the California Department of Water Resources	04/11/2022
12207	Order Regarding Dispute Between Debtors and California Department of Water Resources	04/22/2022
12310	Notice of Appeal and Statement of Election to Have Appeal Heard by United States District Court for the Northern District of California	05/05/2022
12311	Notice of Appeal and Statement of Election to Have Appeal Heard by United States District Court for the Northern District of California	05/05/2022
12322	Courts Certificate of Mailing	05/05/2022
12323	Courts Certificate of Mailing	05/05/2022

Hearing Transcripts from *In re PG&E Corp., et al.*, Case No. 19-30088 (DM):

Dkt. No.	Transcripts	Date
8066	June 19, 2020 Hearing Transcript	06/22/2020
11986	March 2, 2022 Hearing Transcript	03/03/2022
12156	April 13, 2022 Hearing Transcript	04/14/2022

Proofs of Claim filed in *In re PG&E Corp., et al.*, Case No. 19-30088 (DM):

Claim No.	Claimant	Date
78104	California Department of Water Resources	10/18/2019

The Reorganized Debtors reserve the right to designate additional items for inclusion in the record or restate the issues presented on appeal.

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1 Dated: May 18, 2022

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In re:

PG&E CORPORATION,
And
PACIFIC GAS AND ELECTRIC
COMPANY,

Debtor.

· Affects PG&E Corporation
· Affects Pacific Gas and
Electric Company
X Affects both Debtors

Bankruptcy Case
No. 19-30088(DM)

Chapter 11

(Lead Case)
(Joint Administered)

District Court Case No. 4:22-cv02833-HSG

**CALIFORNIA DEPARTMENT OF
WATER RESOURCES' DESIGNATION
OF ADDITIONAL RECORD ON
APPEAL AND STATEMENT OF
ISSUES**

Pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure, the California Department of Water Resources ("DWR") submits its Designation of Additional Record on Appeal and Statement of Issues. DWR reserves the right to designate additional items for inclusion in the record or restate the issues presented on appeal.

DWR DESIGNATION OF RECORD ON APPEAL

DWR designates all of the items to be included in the record on appeal that were designated by the Appellants PG&E Corporation and Pacific Gas & Electric Company, and designates the additional items referenced below, each of which includes all exhibits and addenda attached thereto and filed therewith and any and all documents incorporated by reference therein.

Dkt. No.	Docket Items	Date
65221	Northern California Power Agency Proof of Claim	10/18/2019
60676	City of Santa Clara dba Silicon Valley Power Proof of Claim	10/18/2019
7231	Municipal Objectors' (including Northern California Power Agency) Objection to Plan Confirmation and Objection to Cure Notice and Other Matters Pertaining to Assumption Pursuant to Section 365(B)(1) of the Bankruptcy Code	5/15/2020
7281	California State Agencies' Objection to Confirmation of Debtors' and Shareholders Proponents' Joint Chapter 11 Plan of Reorganization Dated March 16, 2020 [Docket No. 6320]	5/15/20

STATEMENT OF ISSUES ON APPEAL

DWR objects to the issues as framed by Appellants. DWR presents the following issues as proper for the Court on appeal:

1. Whether Debtor's appeal on May 13, 2022, from the Order Denying Motion of the Reorganized Debtors for Entry of an Order Modifying Plan Injunction and Compelling Arbitration of Claim of California Department of Water Resources [Dkt No. 12001] entered March 8, 2022, is timely.

2. If Appellant's appeal is timely, whether the bankruptcy court properly exercised its discretion under *In re Thorpe Insulation Co.*, 671 F.3d 1011 (9th Cir. 2012) in denying Debtors' request for arbitration because it conflicted with provisions in the Plan and Confirmation Order that

1 Debtors agreed to and that expressly reserved jurisdiction for the Court to decide executory
2 contract, cure dispute and claims allowance issues.

3 3. Whether the bankruptcy court properly determined, based on the undisputed facts
4 and the terms of the Castle Rock Agreement, that DWR's notice of termination was effective one
5 year after it gave its notice of termination and that DWR did not owe anything, including any
6 removal costs, to the Debtor or Silicon Valley Power and Northern California Power Agency as a
7 prerequisite for or consequence of such termination.

8 DWR notes that there is another appeal that concerns substantially the same parties,
9 property, transaction and events pending before this Court and the Honorable Haywood S. Gilliam,
10 Jr. as Case No. 4:22-cv02834-HSG. Since the two appeals are already pending before the same
11 District Court Judge, DWR does not believe an Administrative Motion to Consider Whether Cases
12 Should be Related as provided in Local Rule 3-12 is necessary.

13 Dated: June 1, 2022

Respectfully submitted,

14 ROB BONTA
15 Attorney General of California
16 DANETTE VALDEZ, SBN 141780
17 ANNADEL ALMENDRAS, SBN 192064
18 Supervising Deputy Attorneys General

19 By: /s/ Paul J. Pascuzzi

20 PAUL J. PASCUZZI
21 FELDERSTEIN FITZGERALD
22 WILLOUGHBY PASCUZZI & RIOS LLP
23 Attorneys for California Department of
24 Water Resources, by and through the State
25 Water Project

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PROOF OF SERVICE

I, Susan R. Darms, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 500 Capitol Mall, Suite 2250, Sacramento, CA 95814.

On June 1, 2022, I served the within document:

**CALIFORNIA DEPARTMENT OF WATER RESOURCES' DESIGNATION OF
ADDITIONAL RECORD ON APPEAL AND STATEMENT OF ISSUES**

By Electronic Service only via CM/ECF.

/s/ Susan R. Darms
Susan R. Darms